



Steven W. Troxler
Commissioner

**North Carolina Department of Agriculture
and Consumer Services**
Veterinary Division

Joseph W. Reardon
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

February 1, 2021

Vanessa Davis
Owner
Zoomy Dogs, Inc.
5420 NC Hwy 55
Durham, North Carolina 27704

NOTICE OF WARNING

RE: Violation of Title 02 NC Administrative Code ("NCAC") Chapter 52J Section .0204(b).

AWS-WL-2021-2

Facility: Zoomy Dogs, Inc. - License Number 11361

Dear Ms. Davis:

On January 24, 2021, the Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") received a complaint concerning a dog named "Biscuit" that had been injured while in the dog day care services of Zoomy Dogs, Inc. ("the kennel"). Based on the information within the complaint AWS initiated an investigation into potential violation(s) of the North Carolina Animal Welfare Act ("AWA") and its associated rules Title 02 NC Administrative Code ("NCAC") Chapter 52J, as these statutes and rules are the extent of the jurisdiction of the AWS.

The investigation included:

1. A review of the information contained in the complaint;
2. An unannounced site visit by the AWS Outreach Coordinator;
3. An inspection of the primary enclosure where the animal was injured;
4. A review of the relevant kennel records; and
5. A review of the veterinary medical records for Biscuit.

Based on the findings of this investigation, this animal received a significant injury within the primary enclosure at the kennel requiring veterinary care. The injury appears to have been caused by a sharp edge on the base of the elevated agility walk. This piece of equipment was still present in the primary enclosure at the time of the site visit, which occurred 4 days after Biscuit's injury. The AWS Outreach Coordinator directed the kennel manager to remove the equipment from the primary enclosure and the manger complied.

Based on the findings of this investigation, the kennel violated 02 NCAC 52J .0204(b), which requires primary enclosures to be maintained in a manner to prevent injury to animals.

This Warning Letter serves as written notice indicating in which respects the kennel has violated the N.C. Animal Welfare Act and the rules issued pursuant thereto.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's licenses pursuant to N.C.G.S. § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C.G.S. § 19A-40.

Your immediate attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Norris DVM, MS".

Patricia Norris, DVM, MS
Director of Animal Welfare Section
Veterinary Division

Enclosure

cc: Dr. R. Douglas Meckes, State Veterinarian
Joe Reardon, Assistant Commissioner, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

Appendix

REFERENCED STATUTES AND REGULATIONS

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.